

FIRST REGULAR SESSION

SENATE BILL NO. 277

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KOSTER.

Read 1st time January 16, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

1513S.011

AN ACT

To repeal sections 287.020 and 287.200, RSMo, and to enact in lieu thereof two new sections relating to workers compensation payments to dependents, with an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 287.020 and 287.200, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 287.020 and 287.200, to read as follows:

287.020. 1. The word "employee" as used in this chapter shall be construed to mean every person in the service of any employer, as defined in this chapter, under any contract of hire, express or implied, oral or written, or under any appointment or election, including executive officers of corporations. Any reference to any employee who has been injured shall, **only** when the employee is dead, **and further claim is made under section 287.230**, also include [his] **the employee's** dependents, and other persons to whom compensation may be payable **under section 287.230 only**. The word "employee" shall also include all minors who work for an employer, whether or not such minors are employed in violation of law, and all such minors are hereby made of full age for all purposes under, in connection with, or arising out of this chapter. The word "employee" shall not include an individual who is the owner, as defined in subsection 43 of section 301.010, RSMo, and operator of a motor vehicle which is leased or contracted with a driver to a for-hire motor carrier operating within a commercial zone as defined in section 390.020 or 390.041, RSMo, or operating under a certificate issued by the Missouri department of transportation or by the United States Department of Transportation, or any of its subagencies.

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 2. The word "accident" as used in this chapter shall mean an unexpected
19 traumatic event or unusual strain identifiable by time and place of occurrence
20 and producing at the time objective symptoms of an injury caused by a specific
21 event during a single work shift. An injury is not compensable because work was
22 a triggering or precipitating factor.

23 3. (1) In this chapter the term "injury" is hereby defined to be an injury
24 which has arisen out of and in the course of employment. An injury by accident
25 is compensable only if the accident was the prevailing factor in causing both the
26 resulting medical condition and disability. "The prevailing factor" is defined to
27 be the primary factor, in relation to any other factor, causing both the resulting
28 medical condition and disability.

29 (2) An injury shall be deemed to arise out of and in the course of the
30 employment only if:

31 (a) It is reasonably apparent, upon consideration of all the circumstances,
32 that the accident is the prevailing factor in causing the injury; and

33 (b) It does not come from a hazard or risk unrelated to the employment
34 to which workers would have been equally exposed outside of and unrelated to the
35 employment in normal nonemployment life.

36 (3) An injury resulting directly or indirectly from idiopathic causes is not
37 compensable.

38 (4) A cardiovascular, pulmonary, respiratory, or other disease, or
39 cerebrovascular accident or myocardial infarction suffered by a worker is an
40 injury only if the accident is the prevailing factor in causing the resulting medical
41 condition.

42 (5) The terms "injury" and "personal injuries" shall mean violence to the
43 physical structure of the body and to the personal property which is used to make
44 up the physical structure of the body, such as artificial dentures, artificial limbs,
45 glass eyes, eyeglasses, and other prostheses which are placed in or on the body
46 to replace the physical structure and such disease or infection as naturally results
47 therefrom. These terms shall in no case except as specifically provided in this
48 chapter be construed to include occupational disease in any form, nor shall they
49 be construed to include any contagious or infectious disease contracted during the
50 course of the employment, nor shall they include death due to natural causes
51 occurring while the worker is at work.

52 4. "Death" when mentioned as a basis for the right to compensation means
53 only death resulting from such violence and its resultant effects occurring within

54 three hundred weeks after the accident; except that in cases of occupational
55 disease, the limitation of three hundred weeks shall not be applicable.

56 5. Injuries sustained in company-owned or subsidized automobiles in
57 accidents that occur while traveling from the employee's home to the employer's
58 principal place of business or from the employer's principal place of business to
59 the employee's home are not compensable. The extension of premises doctrine is
60 abrogated to the extent it extends liability for accidents that occur on property
61 not owned or controlled by the employer even if the accident occurs on customary,
62 approved, permitted, usual or accepted routes used by the employee to get to and
63 from their place of employment.

64 6. The term "total disability" as used in this chapter shall mean inability
65 to return to any employment and not merely mean inability to return to the
66 employment in which the employee was engaged at the time of the accident.

67 7. As used in this chapter and all acts amendatory thereof, the term
68 "commission" shall hereafter be construed as meaning and referring exclusively
69 to the labor and industrial relations commission of Missouri, and the term
70 "director" shall hereafter be construed as meaning the director of the department
71 of insurance of the state of Missouri or such agency of government as shall
72 exercise the powers and duties now conferred and imposed upon the department
73 of insurance of the state of Missouri.

74 8. The term "division" as used in this chapter means the division of
75 workers' compensation of the department of labor and industrial relations of the
76 state of Missouri.

77 9. For the purposes of this chapter, the term "minor" means a person who
78 has not attained the age of eighteen years; except that, for the purpose of
79 computing the compensation provided for in this chapter, the provisions of section
80 287.250 shall control.

81 10. In applying the provisions of this chapter, it is the intent of the
82 legislature to reject and abrogate earlier case law interpretations on the meaning
83 of or definition of "accident", "occupational disease", "arising out of", and "in the
84 course of the employment" to include, but not be limited to, holdings in: *Bennett*
85 *v. Columbia Health Care and Rehabilitation*, 80 S.W.3d 524 (Mo.App. W.D. 2002);
86 *Kasl v. Bristol Care, Inc.*, 984 S.W.2d 852 (Mo.banc 1999); and *Drewes v. TWA*,
87 984 S.W.2d 512 (Mo.banc 1999) and all cases citing, interpreting, applying, or
88 following those cases.

287.200. 1. Compensation for permanent total disability shall be paid

2 during the continuance of such disability **only** for the lifetime of the employee at
3 the weekly rate of compensation in effect under this subsection on the date of the
4 injury for which compensation is being made; **and shall cease upon the death**
5 **of the employee. No compensation shall be payable to the dependents**
6 **of the employee on and after the date of death.** The amount of such
7 compensation shall be computed as follows:

8 (1) For all injuries occurring on or after September 28, 1983, but before
9 September 28, 1986, the weekly compensation shall be an amount equal to
10 sixty-six and two-thirds percent of the injured employee's average weekly
11 earnings during the year immediately preceding the injury, as of the date of the
12 injury; provided that the weekly compensation paid under this subdivision shall
13 not exceed an amount equal to seventy percent of the state average weekly wage,
14 as such wage is determined by the division of employment security, as of the July
15 first immediately preceding the date of injury;

16 (2) For all injuries occurring on or after September 28, 1986, but before
17 August 28, 1990, the weekly compensation shall be an amount equal to sixty-six
18 and two-thirds percent of the injured employee's average weekly earnings during
19 the year immediately preceding the injury, as of the date of the injury; provided
20 that the weekly compensation paid under this subdivision shall not exceed an
21 amount equal to seventy-five percent of the state average weekly wage, as such
22 wage is determined by the division of employment security, as of the July first
23 immediately preceding the date of injury;

24 (3) For all injuries occurring on or after August 28, 1990, but before
25 August 28, 1991, the weekly compensation shall be an amount equal to sixty-six
26 and two-thirds percent of the injured employee's average weekly earnings as of
27 the date of the injury; provided that the weekly compensation paid under this
28 subdivision shall not exceed an amount equal to one hundred percent of the state
29 average weekly wage;

30 (4) For all injuries occurring on or after August 28, 1991, the weekly
31 compensation shall be an amount equal to sixty-six and two-thirds percent of the
32 injured employee's average weekly earnings as of the date of the injury; provided
33 that the weekly compensation paid under this subdivision shall not exceed an
34 amount equal to one hundred five percent of the state average weekly wage;

35 (5) For all injuries occurring on or after September 28, 1981, the weekly
36 compensation shall in no event be less than forty dollars per week.

37 2. All claims for permanent total disability shall be determined in

38 accordance with the facts. When an injured employee receives an award for
39 permanent total disability but by the use of glasses, prosthetic appliances, or
40 physical rehabilitation the employee is restored to his regular work or its
41 equivalent, the life payment mentioned in subsection 1 of this section shall be
42 suspended during the time in which the employee is restored to his regular work
43 or its equivalent. The employer and the division shall keep the file open in the
44 case during the lifetime of any injured employee who has received an award of
45 permanent total disability. In any case where the life payment is suspended
46 under this subsection, the commission may at reasonable times review the case
47 and either the employee or the employer may request an informal conference with
48 the commission relative to the resumption of the employee's weekly life payment
49 in the case.

50 **3. In applying the provisions of this chapter, it is the intent of**
51 **the general assembly to reject and abrogate the holding in Schoemehl**
52 **v. Treasurer of the State of Missouri, S.W.3d, 2007 WL 58370 (Mo. 2007).**

Section B. Because of the need to ensure the proper application of the
2 state's workers' compensation law, section A of this act is deemed necessary for
3 the immediate preservation of the public health, welfare, peace and safety, and
4 is hereby declared to be an emergency act within the meaning of the constitution,
5 and section A of this act shall be in full force and effect upon its passage and
6 approval.

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